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**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH**

S.B. CRIMINAL MISC. PETITION NO.1239/06

Prem Singh **Versus** State

DATE OF ORDER :: 20/11/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. D.K. Garg, for petitioner

Mr. Arun Sharma, Public Prosecutor

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Instant petition has been filed assailing the condition of bank guarantee which was imposed by learned trial Judge while handing over the vehicle on supurdagi to petitioner vide order dated 27th April, 2005 was modified by revisional court and reduced from Rs.1 lac to Rs.25,000/-.

Petitioner is a registered owner of the vehicle in question bearing Tractor No.RJ-11R-6295. FIR No.55/05 was registered at Police Station, Kaulari, District Bharatpur - on account of which vehicle was seized. Application was filed by petitioner u/s.457 of the Code for release of vehicle on supurdagi. Pending trial, learned trial Judge vide order dated 27th April, 2005 allowed his application so far as release of vehicle on supurdagi is concerned, but condition was imposed that he will furnish bank guarantee in a sum of Rs.1 lac. Since this condition was considered to be onerous, revision petition was filed and the revisional court reduced the bank guarantee from Rs.1 lac to Rs.25,000/- in

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addition to it, learned Judge put condition that vehicle be handed over on supurdagi to him on furnishing solvent security of Rs.1 lac vide order dated 7th May, 2005.

Counsel for petitioner submits that as regards furnishing bank guarantee in the facts of instant case is onerous condition and this court has taken the consistent view that in such like matters where vehicle is handed over on supurdagi it will suffice, if person is being called upon to furnish solvent security of the amount which the court considers appropriate in the facts of instant case and counsel has placed reliance on the judgment of this court in *Vikas Singh Vs. State of Rajasthan* [S.B. Criminal Misc. Petition No.1414/05, decided on 22nd November, 2005] wherein the condition of furnishing bank guarantee has not been considered to be appropriate and same has been set aside.

Counsel has informed this court that since the petitioner being a poor agriculturist and vehicle was required for agriculture purpose, as such he took the same on supurdagi, but after furnishing bank guarantee since the condition is not in terms of provisions of the Code and in view of consistent view of this court, he has challenged this condition which according to him, is not required under law and deserves to be set aside.

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Public Prosecutor has supported the order and submits that it is for the Court to consider while handing over the vehicle on supurdagi and does not call for interference.

In the judgment [supra] on which counsel has placed reliance, consistent view has been expressed that condition of furnishing bank guarantee does not consider to be appropriate and even if once he has furnished it was observed by this court that same be refunded back to petitioner concerned.

In the light of judgment [supra], this court is of the opinion that condition of furnishing bank guarantee by revisional court vide order dated 7th May, 2005 is not legally sustainable and accordingly, to this extent, the order stands set aside and the bank guarantee be refunded back to the petitioner.

With the above observations, the misc. petition stands disposed of.

[AJAY RASTOGI], J.